No. 91-475

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

METROPOLITAN LIFE INSURANCE COMPANY,
Petitioner,

v.

BEATRICE HINDS CARLAND,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITIONER'S REPLY BRIEF

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ARGUMENT

Congress specified that only those "qualified domestic relations orders ["QDROs"] (within the meaning of section 1056(d)(3)(B)(i)(I)" of Title 29 of the United States Code are saved from ERISA pre-emption. ERISA § 514(b)(7) [29 U.S.C. § 1144(b)(7)]. Section 1056(d)(3)(B)(i) applies only to *pension* benefits. *See* ERISA § 206 [29 U.S.C. § 1056]. The Tenth Circuit in *Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114 (10th Cir. 1991), ignored the words of Congress and rewrote section 1056(d) to apply to *welfare* benefits. What this

Court must review is the Tenth Circuit's statutory revisionism, *not* the mere "denial of [ERISA] benefits" by Metropolitan Life Insurance Company ("MetLife"), as respondent erroneously suggests. *See* Brief in Opposition at 15. The "standard of review" set forth in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) (discussed at page 15 of the Brief in Opposition), which applies to ERISA benefit denials, therefore has no bearing on the issue central to the instant petition: whether the Tenth Circuit may, on its own, revise ERISA to produce a result which conflicts with the face of the statute that Congress enacted.

Respondent concedes that the Tenth Circuit reached its result after "interpret[ing] the exceptions" to ERISA preemption. Brief in Opposition at 19. According to respondent, that "interpretation" caused the Tenth Circuit to find that "*all* qualifying domestic relations orders whether they . . . involve a pension or welfare benefit plan" are saved from ERISA pre-emption. *Id.* at 19 (emphasis added). Respondent argues that the Tenth Circuit's statutory revision should be upheld because, in that court's view, "the general goals of ERISA would be served" by exempting all divorce decrees from the unparalleled force of ERISA preemption, *even though* the intent of Congress, as expressed by the face of the statute, directly conflicts with the "interpretation" of the Tenth Circuit. *Id.* at 19. That is precisely the logic which this Court rejected in *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 58 U.S.L.W. 4131, 110 S. Ct. 680, 107 L. Ed. 2d 782 (1990), where this Court made clear that it is the statutory exceptions enacted by Congress—not those judicially created by the courts—that must prevail.

Respondent's claim that MetLife "breached its fiduciary duty" by paying both designated ERISA beneficiaries (as opposed to paying benefits only to respondent, in complete derogation of the remaining beneficiary's

rights) has no validity unless the Tenth Circuit's judicially-created exception to ERISA preemption is adopted wholesale. *See* Brief in Opposition at 20-25. If that exception is rejected—as it should be—then the whole stack of cards erected by respondent (and the Tenth Circuit) falls.

The face of ERISA demonstrates that Congress intended QDROs to be saved only in the context of section 1056(d)(3)(B)(i), which Congress limited to *pension* benefits. ERISA §§ 206, 514(b)(7) [29 U.S.C. §§ 1056, 1144(b)(7)]. If the intention of Congress, rather than the statutory "interpretation" of the Tenth Circuit, is used as the measure of fiduciary performance, then MetLife was required to pay *welfare* benefits to both named beneficiaries and had *no* duty whatsoever to pay benefits solely to respondent based on a Kansas divorce decree. Respondent therefore proves MetLife's point: If the opinion of the Tenth Circuit remains good law, then ERISA fiduciaries will not be able to consult ERISA to determine how their duties should be performed—at least not in the Tenth Circuit. Rather, they will be required to commence interpleader actions so that the court can determine whether the domestic relations order at issue is in fact "qualified." The Tenth Circuit's opinion, by deviating from the face of the statute, emasculates the statute and leaves it of little help.

The authority of *Stone v. Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), *aff'd* 632 F.2d 740 (9th Cir. 1980), *cert. denied*, 453 U.S. 922 (1981), cited by respondent at page 19 of the Brief In Opposition, is not to the contrary. As respondent concedes, at page 18 of the Brief in Opposition, *Stone* predated the 1984 enactment of ERISA's QDRO provisions by some six years. A judicial construction of ERISA made at a time when Congress had failed to limit the domestic relations orders saved from ERISA pre-emption necessarily provides no authority for *ignoring* the limitation which Congress later enacted.

More importantly, by conceding that it is the "interpretation" given the statute by the Tenth Circuit—and not the statute itself—which allegedly demonstrates that MetLife violated its fiduciary duty, respondent proves the validity of the argument made in MetLife's petition. Fiduciary duty under ERISA is defined by statute, not by out-dated case law or statutory "interpretation[s]" which create judicial exceptions to the statutory scheme enacted by Congress.

CONCLUSION

Respondent concedes that it is the "interpretation" of the Tenth Circuit, not the face of ERISA, which supports the result the Tenth Circuit reached in the instant case. This Court should therefore grant the petition and reverse. The Tenth Circuit is not at liberty to fashion law based on its own "general" view of the "goals" it believes ERISA should serve, particularly when Congress has specifically answered the question raised by the petition, and has answered it differently than did the Tenth Circuit. By providing that only those QDROs "within the meaning of section 1056(d)(3)(B)(i)" would be saved from ERISA pre-emption, Congress has spoken. This Court should also now speak by reversing the holding of the Tenth Circuit, which, apparently, was not listening.

Respectfully submitted,

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